

A RESOLUTION**BY COUNCILMEMBER DEBI STARNES**

AUTHORIZING THE MAYOR OR DESIGNEE TO ACCEPT AND EXECUTE AN AGREEMENT FOR A TEMPORARY CONSTRUCTION EASEMENT THAT WILL EMPLOY THE USE OF A PRESTRESSED TIE-BACK SYSTEM LOCATED WITHIN AND UNDER THE PUBLIC RIGHTS-OF-WAY ADJOINING THE PRIVATE PROPERTY AT 81 ANDREW YOUNG INTERNATIONAL BOULEVARD BEGINNING AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF HARRIS STREET AND EASTERLY RIGHT-OF-WAY LINE OF WILLIAMS STREET ALONG THE WESTERLY SIDE OF WINDSHIP PLACE TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF ANDREW YOUNG INTERNATIONAL BOULEVARD (MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO), WHEREIN THE GRANTEE RESERVES THE RIGHTS TO LIMIT AND REGULATE THE USAGE OF THE SURFACE, SUB-SURFACE AND AERIAL SPACES WITHIN THE RIGHTS OF WAY; TO PROVIDE CONDITIONS FOR ALLOWING SAME: AND FOR OTHER PURPOSES.

WHEREAS, Urban Land, LLC, (hereinafter referred to as "Owner") is the fee-simple owner of a certain parcel of land beginning at the intersection of the southerly right-of-way line of Harris Street and easterly right-of-way line of Williams Street along the westerly side of Windship Place to a point on the northerly right-of-way line of Andrew Young International Boulevard, and being more particularly described in Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, owner desires to obtain permission from the City of Atlanta to construct and maintain a temporary tie-back system which employs temporary anchors within, the rights-of-way below the surface of 81 Andrew Young International Boulevard Street, lying and being in Land Lot 78 of the 14th of the District of Fulton County, Georgia and being more particularly described in Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA that:

SECTION 1: The Mayor or her designee is authorized to accept and execute on behalf of the City of Atlanta an agreement between the City and Owner, which permits Owner to construct and maintain a tie-back system in the public rights-of-way; and

SECTION 2: The Commissioner of the Public Works and/or Watershed Management, acting as the Mayor's designee, is authorized to review and approve the terms and conditions for the construction, maintenance, and removal of said temporary tie-back system, and to review and approve the plans for any construction, relocation, and/or modification to the referenced tie-back system.

SECTION 3: The City Attorney is hereby directed to review an appropriate agreement for execution by the Mayor, to be approved by the City Attorney as to form.

SECTION 4: This agreement shall not become binding on the City and the City shall incur no liability upon same until such agreement has been executed by the Mayor and delivered to Owner.

SECTION 5: That all reloutions and parts of reloutions in conflict herewith be and the same are hereby repealed.

AFTER RECORDING RETURN TO:

Mr. Greg Avitabile
AMC, Inc.
240 Peachtree Street, NW
Suite 2200
Atlanta, GA 30303

TIE-BACK EASEMENT AGREEMENT

THIS TIE-BACK AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2005, by and between CITY OF ATLANTA ("Grantor") and URBAN LAND, LLC, a Georgia Limited Liability Company ("Grantee").

WITNESSETH:

WHEREAS, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid by each party unto the other, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Background.

- A. Grantor is the owner of al that tract or parcel of PUBLIC STREETS and being in Fulton County, Georgia, and being more particularly noted on *Exhibit A – Site Civil Plan* (the "Grantor's Property").
- B. Grantee is the owner of all that tract or parcel of PRIVATE LAND lying and being in Fulton County, Georgia, and being more particularly described on *Exhibit A – Site Civil Plan & Exhibit B – Legal Description of Property* (the Grantee's Property"); and
- C. Grantee is developing the Grantee's Property as a trade mart with related improvements (the "Base Building").

2. Grant of Easement. Grantor does hereby grant to Grantee, and to Grantee's employees, agents, and contractors, a temporary, non-exclusive easement (the "Tie-Back Easement") beneath a portion of Grantor's Property for the purpose of installing steel piles, lagging, steel sheet piles, and tie-back rods in connection with two phases of work upon Grantee's Property as follows: (i) the abatement of certain subsurface environmental conditions, and (ii) the construction of the Base Building. The exact location and extent of such tie-back rods will be more particularly shown on separate engineering drawings for each phase to be submitted to Grantor by Grantee; it being understood and agreed, however, that work on each phase will commence only following written approval by the Department of Public Works of the drawings for phase. The temporary easement granted hereby will terminate at such time as

Grantee has completed construction of the concrete walls which the tie-back rods support, together with their permanent supporting structures.

3. Easement Fee. As consideration for the grant of the Tie-Back Easement, Grantee shall pay to Grantor the sum of \$10.00 ("Easement Fee").

4. Authority. Grantor represents and warrants that Grantor has full power and authority to enter into this Agreement and to grant the Tie-Back Easement provided for herein, without consent of any other party, and agrees that Grantor will warrant and forever defend Grantee's right and title to the Tie-Back Easement against the claims of all persons whomsoever.

5. Release of Claims. In further consideration of the payment by Grantee to Grantor of the Easement Fee, Grantor, for itself and for those claiming by through or under it, hereby waives any and all claims for loss or damage which it might otherwise have against Grantee or Grantee's employees, agents and contractors, for nuisance or interference with the quiet enjoyment of the Grantor's Property as a result of the construction activities taking place on the Grantee's Property. Furthermore, Grantor acknowledges and agrees that Grantee, and its agents, employees and contractors, may, in the course of conducting such construction activities, inadvertently enter or traverse the Grantor's Property from time to time. With respect thereto, Grantor acknowledges and agrees that it shall not make any claim against Grantee as a result of any such entries, so long as such entries do not materially adversely affect Grantor or its tenants.

6. Repair of Property. Any and all damage to the Grantor's Property or the improvements or landscaping located thereon resulting from Grantee's exercise of its rights hereunder shall be promptly repaired at the sole cost and expense of Grantee. In all events, Grantee will use and enjoy the easements granted to Grantee in such a manner as to minimize, to the extent reasonably practicable, any interference with any business or other operations on the Grantor's Property.

7. Lien-Free Construction. Grantee agrees to bear all expenses incurred in performing the work contemplated hereunder, except as set forth in Section 5. Grantee covenants and agrees that it will not cause or suffer any lien or claim of lien to be filed against any portion of the Grantor's Property as a result of work or maintenance done or caused to be done by Grantee under the provisions of this Agreement. In the event any such lien or claim of lien is filed, Grantee will remove or bond over the same within thirty (30) days after the filing thereof. If Grantee fails to fulfill such obligations as provided above, Grantee may pay or perform the same and the costs thereof shall be reimbursed by Grantee to Grantor on demand.

8. Indemnification. Grantee shall indemnify and hold harmless Grantor, and its officers, agents and employees (collectively, the "Grantor Indemnities") from and against any and all liabilities, losses, costs, damages and expenses of whatsoever nature that may be incurred by the Grantor Indemnities, or any of them, and arising out of or in connection with personal injury or death of persons, or any loss, destruction or damage to the Grantor's Property, where any such personal injury, death, loss, destruction, damage, lien or claim thereof results in whole or in part from the acts or omissions of Grantee, its employees, agents, guests, invitees,

representatives, contractors and/or consultants or any of them, which acts or omissions are related to the exercise of the easement rights and other rights granted herein.

9. Insurance. Grantee shall cause all persons and entities entering the Tie-Back Easement Area on the Grantor's Property at Grantee's request to maintain adequate and appropriate insurance to cover risks of the type described in Section 8 above.

10. Warranties. Grantee represents and warrants to Grantor (i) that Grantee is the lawful owner of the Grantee's Property, that there are no easements, grants, deeds to secure debt, restrictions, liens, claims or encumbrances against or affecting Grantor's exercise of its rights under this Agreement; and (ii) Grantee has the full right, power and authority to enter into, execute and deliver this Agreement.

11. Reservation. Grantor hereby reserves all right, title and interest in and to the fee simple estate of Grantor's Property incident to Tie-Back Easement Area, and for any and all purposes not inconsistent with the Grantee's use by of the Tie-Back Easement Area as expressly permitted herein.

12. Miscellaneous.

- A. Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by any party hereto shall not discharge or release such party from its or their obligations hereunder.
- B. All rights, powers, and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the real covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein, or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal, or unenforceable, the validity of the remainder of the terms, provisions, covenants or agreements or the application of such term, provisions, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.
- C. Any provision of this Agreement may be modified or amended, in whole or in part, only with the prior written consent of all parties hereto.
- D. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective legal representatives, successors, successors-in-title, heirs, grantees and assigns. All of the terms, provisions, rights, covenants, restrictions, easements and licenses set forth in this Agreement shall be appurtenant to and shall run with the real property which is thereby burdened or benefited.

- E. Any notice required or permitted to be delivered hereunder shall be in writing, signed by the party giving such notice or its attorney at law and shall be deemed to be delivered (a) when the same has been received via the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the party to whom such notice is sent, receipt being evidenced by the return receipt therefore, (b) when personally delivered by commercial courier service or other messenger maintaining evidence of delivery, or (c) when transmitted by facsimile evidenced by a confirmed receipt and followed by delivery in accordance with clause (b) of this paragraph. For purposes of notice, the addresses of the parties, until changed as hereinafter provided, are as follows:
- F. All tie-backs will be released at the completion of the project. We do not foresee any tie-back to within 6' of the surface.

Grantor: CITY OF ATLANTA
Site Development
55 Trinity Avenue
Atlanta, Georgia 30303
Attention: David Thomas
Phone: (404) 330.6089
Facsimile: (404) 658.7673

Grantee: URBAN LAND, LLC
c/o AMC, Inc.
240 Peachtree Street, NW
Suite 2200
Atlanta, Georgia 30339
Attention: Greg Avitabile
Phone: (404) 220.2896
Facsimile: (678) 686.5105

- G. All exhibits referred to in this Agreement and attached hereto are hereby incorporated into and are a part of this Agreement.

TO HAVE AND TO HOLD the aforescribed rights and Tie-Back Easement to Grantee in accordance with the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

[signatures on next page]

Signed, sealed and delivered in the presence of:

Virginia Indley
Unofficial Witness

Susan S. Woolcott
Notary Public

[NOTARY SEAL]

My Commission Expires:

**My Commission Expires
June 7, 2009
Fulton Co., Georgia**

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

[NOTARY SEAL]

My Commission Expires:

GRANTEE:

URBAN LAND, LLC
A Georgia limited liability company

By: *[Signature]*

Name: *Henry C. Almon Jr., Jr.*

Title: *EVP, AMC, Inc. Managing Member*

[SEAL]

GRANTOR:

CITY OF ATLANTA

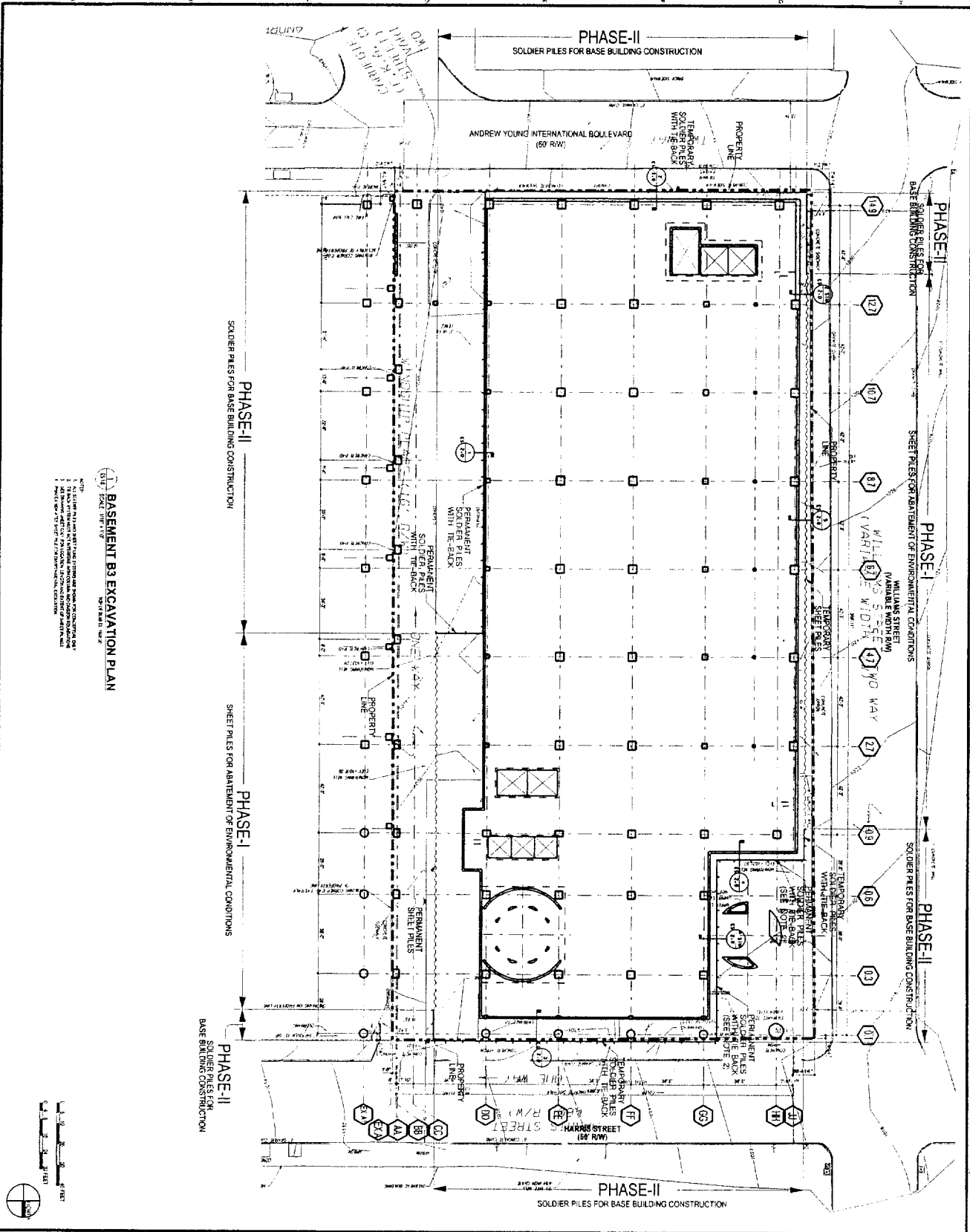
By: _____

Name: _____

Title: _____

[SEAL]

DATE	2005.08.24
BY	ES 1.0
CHECKED	ES 1.0
APPROVED	ES 1.0



DATE	2005.08.24
BY	ES 1.0
CHECKED	ES 1.0
APPROVED	ES 1.0
PROJECT	AMERICAS MART 4: GIFT MART EXPANSION
DESIGNER	ES 1.0
ENGINEER	ES 1.0
ES 1.0	

AMERICAS MART 4: GIFT MART EXPANSION
 ORDINANCE PRINT
 AUGUST-24-2005

NO. OF SHEETS	1
SHEET NO.	1
TITLE	AMERICAS MART 4: GIFT MART EXPANSION
DATE	2005.08.24
BY	ES 1.0
CHECKED	ES 1.0
APPROVED	ES 1.0

NOT FOR CONSTRUCTION

Description of Land

All that tract or parcel of land lying and being in Land Lot 78 of the 14th District, Fulton County, Georgia, and being more particularly described as follows:

Beginning at the intersection of the southerly right-of-way line of Harris Street (60' right-of-way) and easterly right-of-way line of Williams Street (variable width right-of-way) and proceeding thence along the southerly right-of-way line of Harris Street, North 89°59'25" East a distance of 184.28 feet to a point; proceeding thence along the westerly side of Windship Place, South 00°20'43" West a distance of 406.21 feet to a point on the northerly right-of-way line of International Boulevard (60' right-of-way); proceeding thence along the northerly right-of-way line of International Boulevard, North 89°57'06" West a distance of 181.90 feet to the intersection of the northerly right-of-way line of International Boulevard and the easterly right-of-way line of Williams Street; proceeding thence along the easterly right-of-way line of Williams Street, North 00°00'37" East a distance of 406.02 feet to the point of beginning.

EXHIBIT B